

**CHAPTER NO. 942**

**SENATE BILL NO. 555**

**By Clabough**

**Substituted for: House Bill No. 1387**

**By McMillan, Maddox**

AN ACT to amend Tennessee Code Annotated, Title 4 and Title 68, Chapter 11, relative to the health services and development agency and the board for licensing health care facilities.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Notwithstanding the provisions of Tennessee Code Annotated, Section 4-29-104 and 4-29-112, to the contrary, the state health planning and advisory board shall terminate and cease to exist on June 30, 2004, and all functions of the state health planning and advisory board shall be transferred to the Department of Finance and Administration pursuant to this act.

SECTION 2. Tennessee Code Annotated, Section 68-11-1602, is amended by deleting subsections (2), (6) and (18) in their entirety, by substituting instead the following three new, appropriately designated subsections, and by renumbering the remaining subsections as appropriate:

(\_) "Ex parte communications" means communications in violation of § 4-5-304 or § 68-11-1607(d);

(\_) "Planning division" and "state health planning division" mean the state health planning division of the Department of Finance and Administration, which is created by this part to develop the state health plan and to conduct other related studies;

(\_) "State health plan" means the plan that is developed by the state health planning division pursuant to this part. The plan shall include clear statements of goals, objectives, criteria and standards to guide the development of health care programs administered or funded by the State of Tennessee through its departments, agencies or programs, and considered as guidance by the agency when issuing certificates of need.

SECTION 3. Tennessee Code Annotated, Section 68-11-1605, is amended by deleting subsections (2), (3) and (4) in their entirety and by substituting instead the following new subsections:

(2) Review the state health plan as developed and submitted by the state health planning division and make recommendations to the state health planning division and the governor concerning the state health plan;

(3) Promulgate rules, regulations and procedures deemed necessary by the agency for the fulfillment of its duties and responsibilities under this part, including a procedure for the issuance of a certificate of need upon an emergency application where an unforeseen event necessitates the issuance of a certificate of need to protect the public health, safety and welfare, and where

the public health, safety and welfare would be unavoidably jeopardized by compliance with procedures established under other provisions of this part;

(4) Contract when necessary for the implementation of the certificate of need program as defined by this part; and

(5) Weigh and consider the health care needs of consumers, particularly women, racial and ethnic minorities, TennCare or Medicaid recipients and low income groups whenever the agency performs its duties or responsibilities assigned by law.

SECTION 4. Tennessee Code Annotated, Section 68-11-1607(a), is amended by deleting the language, "to rehabilitation" and substituting instead the language, "to acute, rehabilitation" in subdivision (3)(C); by deleting the language, "air ambulance," from subdivision (4); and by deleting subdivision (5) in its entirety and substituting instead the following:

(5) A change in the location of or the replacement of existing or certified facilities providing health care services and health care institutions, or a change in the location of or the replacement of medical equipment that requires a certificate of need. An additional certificate of need is not required to move mobile medical equipment that requires a certificate of need to a facility site for which a certificate of need already has been issued. A change in the location of or the replacement of a home health agency may be exempted from certificate of need requirements by agency rule. The relocation of the principal office of a home health agency or hospice within the same county shall not require a certificate of need;

SECTION 5. Tennessee Code Annotated, Section 68-11-1607, is amended by adding a new appropriately designated subsection as follows:

( ) Nothing in this part shall require a certificate of need in order for an existing hospital licensed by the Department of Mental Health and Developmental Disabilities to become licensed by the Department of Health as a satellite of an affiliated general acute care hospital, as provided by Tennessee Code Annotated, Section 33-2-403(b)(8)(B).

SECTION 6. Tennessee Code Annotated, Section 68-11-1609(b), is amended by deleting the second sentence of the subsection and by substituting instead the following:

In making such determinations the agency shall use as guidelines the goals, objectives, criteria and standards in the state health plan. Until the state health plan is approved and adopted, the agency shall use as guidelines the current criteria and standards adopted by the state health planning and advisory board, and any changes implemented thereto by the planning division pursuant to Tennessee Code Annotated, Section 68-11-1625.

SECTION 7. Tennessee Code Annotated, Section 68-11-1610(d), is amended by deleting the language "arbitration and mediation alternatives" in the second sentence of the subsection and by substituting instead the language "mediation alternative"; and by deleting the language "either the arbitration or mediation alternative" in the third sentence of the subsection and by substituting instead the language "the mediation alternative".

SECTION 8. Tennessee Code Annotated, Section 68-11-1610(e), is amended by deleting the subsection in its entirety and by substituting instead the following:

(e) Initial orders of the administrative law judge in contested cases may be appealed in writing to the agency. The agency may decline to hear any appeal. If the agency reviews the order, it must do so in accordance with the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5. If the agency declines to review the order, the requesting party may appeal the order to the Davidson County chancery court in accordance with the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5.

SECTION 9. Tennessee Code Annotated, Section 68-11-1610, is amended by deleting subsection (f) in its entirety and by renumbering the remaining subsections accordingly.

SECTION 10. Tennessee Code Annotated, Section 68-11-1610(g), is amended by deleting the language "additional alternative" and by substituting instead the language "alternative".

SECTION 11. Tennessee Code Annotated, Section 68-11-1610(h), is amended by deleting current language in its entirety and by substituting instead the following:

The general assembly declares the public policy of this state to be that certificate of need contested cases should be resolved through mediation, and the parties to such proceedings are encouraged to pursue this alternative.

SECTION 12. Tennessee Code Annotated, Section 68-11-1610(j), is amended by deleting the language "the administrative law judge's costs, the arbitrator's fee, if any, and deposition costs, including fees of expert witnesses," and by substituting instead the language "the administrative law judge's costs and deposition costs such as expert witness fees,".

SECTION 13. Tennessee Code Annotated, Section 68-11-1617, is amended by deleting subsections (b), (c), (d) and (e) in their entirety, by substituting instead the following, and by redesignating the remaining subsections as appropriate:

(b) A civil penalty proceeding shall be initiated by the executive director of the agency with the filing of a petition with the agency. The proceeding will be conducted as a contested case hearing in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5, Part 3.

(c) The civil penalty shall be in an amount not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) per day of continued activity or operation. Once a civil penalty has been imposed, the violator shall have the burden of submitting verifiable evidence satisfactory to the agency, that the violator has discontinued the activity for which the civil penalty was imposed. The penalty shall begin to accrue on the date the agency notified the violator of such violation(s), and shall continue to accrue until such evidence of discontinuance is received at the agency office.

(d) Any appeal of a final order imposing a civil penalty shall be conducted in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5, Part 3.

SECTION 14. Tennessee Code Annotated, Section 68-11-1625, is amended by deleting the current language in its entirety and by substituting instead the following:

(a) There is hereby created the state health planning division of the Department of Finance and Administration. It is the purpose of the planning division to create a state health plan that is evaluated and updated at least annually. The plan shall guide the state in the development of health care programs and policies and in the allocation of health care resources in the state.

(b) It is the policy of the State of Tennessee that:

(1) Every citizen should have reasonable access to emergent and primary care;

(2) The state's health care resources should be developed to address the needs of Tennesseans while encouraging competitive markets, economic efficiencies and the continued development of the state's health care industry;

(3) Every citizen should have confidence that the quality of health care is continually monitored and standards are adhered to by health care providers; and

(4) The state should support the recruitment and retention of a sufficient and quality health care workforce.

(c) The planning division shall be staffed administratively by the Department of Finance and Administration in a manner that the department deems necessary for the performance of the planning division's duties and responsibilities, which may include contracting for the services provided by the division through a private person or entity.

(d) The duties and responsibilities of the planning division include:

(1) To develop and adopt a state health plan, which must include, at a minimum, guidance regarding allocation of the state's health care resources;

(2) To submit the state health plan to the health services and development agency for comment;

(3) To submit the state health plan to the governor for approval and adoption;

(4) To hold public hearings as needed;

(5) To review and evaluate the plan at least annually;

(6) To respond to requests for comment and recommendations for health care policies and programs;

(7) To conduct an ongoing evaluation of Tennessee's resources for accessibility, including but not limited to financial, geographic, cultural, and quality of care;

(8) To review the health status of Tennesseans as presented annually to the planning division by the Department of Health and the Department of Mental Health and Developmental Disabilities;

(9) To review and comment on federal laws and regulations that influence the health care industry and the health care needs of Tennesseans;

(10) To involve and coordinate functions with such state entities as necessary to ensure the coordination of state health policies and programs in the state;

(11) To prepare an annual report for the general assembly and recommend legislation for their consideration and study; and

(12) To establish a process for timely modification of the state health plan in response to changes in technology, reimbursement and other developments that affect the delivery of health care.

(e) The planning division shall succeed the state health planning and advisory board, which shall terminate effective June 30, 2004. The planning division shall become the owner of all information, files, materials, research, and other documents in the possession of the state health planning and advisory board and any of its subcommittees on July 1, 2004, and all such information and materials shall be physically or electronically transferred to a person or entity designated by the Commissioner of Finance and Administration on or before July 1, 2004. The state health plan developed by the state health planning and advisory board and in existence as of July 1, 2004, shall be adopted by the planning division as the current state health plan until a new state health plan is developed by the planning division. The planning division is authorized to review and implement any changes to the state health plan recommended by the state health planning and advisory board or any of its subcommittees in its discretion.

(f) A separate account is authorized to provide support for the state health planning division of the Department of Finance and Administration. The following schedule of fees from health care providers shall be collected annually and administered by the Department of Finance and Administration. The account shall be used for other services required to fulfill the duties of the state health planning division of the Department of Finance and Administration. All planning staff shall be hired by and under the direction of the Commissioner of Finance and Administration. All planning staff shall be hired by and under the direction of the Commissioner of Finance and Administration. The following schedule shall apply:

- (1) Residential hospice.....\$100 per license;
- (2) Nursing homes.....\$100 per license;
- (3) Hospitals 1-100 beds.....\$100 per license;
- (4) Hospitals 101-200 beds.....\$200 per license;
- (5) Hospitals 201 + beds.....\$300 per license;
- (6) Ambulatory surgical treatment centers..... \$100 per license;
- (7) Outpatient diagnostic centers..... \$100 per license;
- (8) Home care organizations authorized to provide

- home health services or hospice services..... \$100 per license;
- (9) Birthing centers.....\$50 per license;
- (10) Non-residential methadone treatment facilities.....\$75 per license;
- (11) Mental health hospitals 1-100 beds.....\$100 per license;
- (12) Mental health hospitals 101 + beds..... \$200 per license;
- (13) Mental health residential treatment facilities.....\$100 per license;
- (14) Mental retardation institutional habilitation facilities..... \$100 per license.

SECTION 15. Tennessee Code Annotated, Section 68-11-1623, is amended by deleting the existing language in its entirety and by substituting instead the following new language:

All fees and civil penalties authorized by this part, with the exception of fees established pursuant to Section 68-11-1625, shall be maintained in a separate account administered by the health services and development agency. Fees include, but are not limited to, fees for the application of certificates of need, subscriptions, project cost overruns, copying and contested cases. The account is established for the purpose of providing support for the implementation of the certificate of need program, data collection and the administration of the agency. It is the intent of the general assembly that any accumulated revenues in excess of expenditures in this account shall, at the end of each fiscal year, be carried forward for the purpose for which they were originally intended. It is also the intent of the general assembly that, for the fiscal year 2004-2005, all funds accumulated and collected as authorized by Section 68-11-1625, for the state health planning and advisory board, shall transfer to the state division of health planning in the Department of Finance and Administration for the purpose of implementation and development of the state health plan and to further the purposes and operation of the division.

SECTION 16. Tennessee Code Annotated, Section 68-11-1604(b)(1), is amended in subdivision (1) by deleting the language "nine (9)" and substituting instead the language "ten (10)".

SECTION 17. Tennessee Code Annotated, Section 68-11-1604(b)(1), is amended by deleting item (F) in its entirety and by substituting instead the following:

(F) Five (5) members appointed by the governor who include:

(i) One (1) person who has recent experience as an executive officer of a hospital or hospital system from a list of three (3) nominees submitted by the Tennessee Hospital Association;

(ii) One (1) representative of the nursing home industry from a list of three (3) nominees submitted by the Tennessee Health Care Association;

(iii) One (1) duly licensed physician from a list of three (3) nominees submitted by the Tennessee Medical Association;

(iv) One (1) representative of the home care industry from a list of three (3) nominees submitted by the Tennessee Association for Home Care. The initial term for the home care industry representative shall be two (2) years. Upon the expiration of that term, the home care industry representative shall be appointed for a three-year term pursuant to subsection (c); and

(v) One (1) consumer member.

SECTION 18. Tennessee Code Annotated, Section 68-11-1604(c), is amended by deleting subdivision (2) in its entirety and by substituting instead the following:

(2) Except for the comptroller of the treasury, the Commissioner of Commerce and Insurance, and the director of TennCare, or their respective designees, agency members shall be appointed for three-year terms and no member shall serve more than two (2) consecutive three-year terms. The terms of the members are staggered on the following schedule: The terms of the nursing home representative, hospital representative, and the consumer member appointment by the Speaker of the House of Representatives are due to expire in calendar year 2004 and those appointments shall be made in that year and each third year thereafter; the terms of the physician member and the consumer member appointed by the governor are due to expire in calendar year 2005 and those appointments shall be made in that year and each third year thereafter; and the terms of the home care industry representative and the consumer member appointed by the Speaker of the Senate are due to expire in calendar year 2006 and those appointments shall be made in that year and each third year thereafter.

SECTION 19. Tennessee Code Annotated, Section 68-11-1604(e)(1), is amended by deleting the following language:

No member shall serve consecutive terms as chair.


SECTION 20. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 21. This act shall take effect July 1, 2004, the public welfare requiring it.

PASSED: May 21, 2004



JOHN S. WILDER  
SPEAKER OF THE SENATE



JIMMY NAIFEH, SPEAKER  
HOUSE OF REPRESENTATIVES

APPROVED this 15<sup>th</sup> day of June 2004



PHIL BREDEBEN, GOVERNOR